

## Sexual harassment in the workplace Laws In Australia

Sexual harassment is unwanted or unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated. Sexual harassment is a type of sex discrimination and is a major obstacle to women lawyers fully and equally participating in the legal profession. The Law Council's 2013 National Attrition and Re-Engagement Survey (NARS) found that one in four women have experienced sexual harassment in their legal workplace. It is a key reason why women leave the law.

The Law Council is committed to ensuring that all members of the legal profession are treated fairly and respectfully. To ensure that employees feel safe and comfortable in their employment, workplaces should develop and implement workplace practices to address inappropriate sexual workplace behaviour and respond to complaints effectively. An employee may experience discrimination not only by being a victim of sexual harassment, but also by their employer failing to effectively respond to their complaint.

Below are some examples of resources from the Law Council's Constituent Bodies to assist legal practices in developing workplace practices and policies to effectively educate employees and respond to complaints regarding workplace sexual harassment.

### **What is the law in relation to workplace sexual harassment?**

Section 28A of the *Sex Discrimination Act 1984* (Cth) defines sexual harassment as when a person makes an unwelcome sexual advance, an unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature in relation to a person. This occurs in circumstances where it is possible that the person harassed would be offended, humiliated or intimidated. Sexual harassment can be subtle and implicit rather than explicit.

Sexual harassment can also include staring or leering, suggestive comments or jokes, displaying posters, magazines or screen savers of a sexual nature, stalking, sending sexually explicit emails or text messages, or unwelcome touching.

Some of these may have implications under criminal law, for example, sexual assault, indecent exposure, stalking or obscene communications.

The Australian Solicitors' Conduct Rules and Legal Profession Uniform Conduct (Barristers') Rules outline a common set of professional obligations and ethical principles solicitors and barristers are bound by when practicing, including in relation to conduct which constitutes sexual harassment. This includes the following rule:

#### **42. Anti-discrimination and harassment**

42.1 A solicitor must not in the course of practice, engage in conduct which constitutes:

- 42.1.1 discrimination;
- 42.1.2 sexual harassment; or
- 42.1.3 workplace bullying.

The Rules rely on the definition of sexual harassment as exists under the applicable state, territory or federal anti-discrimination or human rights legislation.

#### **Vicarious liability of employers**

Under section 106 of the *Sex Discrimination Act 1984* (Cth) employers may be vicariously liable if an employee commits sexual harassment, and the employer did not take all reasonable steps to prevent the employee from doing these acts. According to the Australian Human Rights Commission (AHRC), an employer would be expected to have a sexual harassment policy, provide training for employees on how to identify and respond to sexual harassment, implement an internal complaints-handling procedure, and take appropriate remedial action if

and when a sexual harassment complaint is made.

## **Resources to address sexual harassment in the workplace**

A number of the Law Council's Constituent Bodies and other legal and non-legal organisations have resources that may assist workplaces in developing and implementing workplace sexual harassment policies, including the following:

- The Victorian Bar Association have published a Policy Against Sexual Harassment, effective from 1 July 2018. The Policy aims to, among other things, create a work and business environment free from sexual harassment, treat complaints made in good faith about sexual harassment confidential, timely, fair and with protection from reprisal, and implement training and awareness of behaviours that constitute sexual harassment. The Victorian Bar Association's website also includes a complaint and report form to allow for complaints or the reporting of occurrences of sexual harassment to be made against barristers by barristers, or by persons who engage with barristers.
- The Law Institute of Victoria's website contains some helpful information on how to stop sexual harassment happening in your office.
- The Victorian Equal Opportunity and Human Rights Commission's website includes a Sexual Harassment FAQ page, information on dispute resolution, and a number of resources and publications on sexual harassment in the workplace.
- The New South Wales Bar Association's Model Harassment, Discrimination, Vilification and Victimisation Best Practice Guideline provides a structure to assist in resolving matters of harassment, discrimination, vilification and/or victimisation, including sexual harassment. The Guideline also aims to promote

the Barristers' Conduct Rules and the New South Wales Bar Association's Diversity and Equity Policy.

- The Western Australian Equal Opportunity Commission website provides information about how to make a complaint about sexual harassment in Western Australia.
- The Queensland Law Society's Sexual Harassment Policy includes employer, manager and employee responsibilities in relation to sexual harassment, and procedures for dealing with a sexual harassment complaint. The Anti-Discrimination Commission Queensland's website contains information about how to make a complaint about sexual harassment in Queensland.
- Equal Opportunity Tasmania's website contains information about how to make a complaint about sexual harassment in Tasmania.
- AHRC has information regarding employer and employee rights and obligations in relation to sexual harassment. The AHRC also has information about how to make a complaint if a person has been sexually harassed in their workplace.